IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6996 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

URMILABEN UDAISINH PADHIYAR W/O.LATE UDAISINH N.PADHIYAR - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

MR GK RATHOD for Respondent No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/08/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and award

passed by the Industrial Tribunal, Vadodara dated 2.8.2004 in Reference (IT) No. 48/2002 by which the Industrial Tribunal has partly allowed the said Reference directing the petitioner to give appointment to the respondent as she being widow of the deceased workman on compassionate ground, however the Tribunal did not pass any order with regard to backwages.

2. Few facts are necessary for determination of the present Special Civil Application. One Udaisinh Padhiyar, husband of the respondent who was serving with the petitioner Corporation died on 22.8.1986. The respondent being widow of the deceased workman had submitted an application for appointment on compassionate ground in job of her husband and the said application came to be rejected on the ground that she is not having requisite qualification of passing 7th Standard which is must for appointment as Peon. Thereafter the respondent passed 7th Standard and made another application on 11.8.1989 which came to be rejected on the ground that the said application is submitted after a period of three years and 3 months of the death of the workman and though she has acquired the qualification subsequently as per the settlement under which appointment is made on compassionate ground the application should be made within the period of 2 years from the date of death of a workman. The respondent raised an industrial dispute which was

referred to the Industrial Tribunal, Vadodara,being Reference (IT) No. 48/2002 which dispute was on the question whether on the death of respondent's husband on 28.2.1986 who was serving as conductor his widow should be appointed on compassionate ground as a Peon from the date of her application with backwages or not. The said Reference was resisted and opposed by the Corporation by submitting that the application of the respondent was made belatedly after a period of 3 years and 3 months; as per the settlement the application was to be made within the period of 2 years; in fact the respondent was not having requisite qualification which was required for the purpose of appointment as Peon, i.e. Pass in 7th Standard and therefore the second application submitted by the respondent after obtaining qualification of passing 7th standard and that too after a period of 3 years and 3 months is rightly rejected; and it is therefore requested to dismiss the Reference.

3. The Industrial Tribunal held that as the respondent had submitted the application in the month of October 1999 immediately after passing of 7th Standard in the month of August 1999 it cannot be said that there was a delay and that considering the benevolent scheme of providing employment to the heir of the deceased workman the application on the ground of delay which is technical one should not have been rejected and partly allowed the said Reference

directing the petitioner to give appointment to the respondent as a Peon as heir of deceased Udaisinh Nagji Bala. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Vadodara dated 2.8.2004 in Reference (IT) No. 48 of 2002 the petitioner Corporation has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri Hardik Raval, learned advocate appearing on behalf of the petitioner has submitted that the first application of the application came to be rejected on 24.8.1988 on the ground that she was not having requisite qualification and it was not challenged by the respondent. He has also further submitted that the second application came to be submitted by the respondent after a period of 3 years and 3 months from the date of death of the workman which was belated and as per the settlement the application was to be made within the period of 2 years from the date of death of workman and therefore the application was rightly rejected. It is also further submitted that the finding given by the Industrial Tribunal that the application for appointment on compassionate ground cannot be rejected on technical ground of delay is contrary to the scheme and the object for which compassionate appointment is given. He relied upon the following

judgments of the Hon'ble Supreme Court:

1. State of Manipur Vs. Md. Rajodin, reported in (2003) 7 SCC Page 511.

2. Haryana State Electricity Board and Another Vs. Hakim Singh. reported in (1997) 8 SCC Page 85.

3. U.P. Vs. Paras Nath, reported in (1998) 2 SCC Page 412.

4. Haryana State Electricity Board Vs. Naresh Tanwar and Another, reported in (1996) 8 SCC Page 23.

Relying upon the aforesaid decisions of the Hon'ble Supreme Court, it is submitted that as held by the Hon'ble Supreme Court, the purpose of providing compassionate appointment is to mitigate hardship caused due to sudden death of the bread-winner in the family. It is further submitted, as held by the Hon'ble Supreme Court, that the very object of appointment of dependent of deceased employee who died in harness is to relieve immediately hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept pending for years. Shri Raval has further submitted that there is no reservation in favour of heir of the deceased and that the appointment can be given at any time as and when the heir of the deceased acquires the requisite

qualification. Therefore it is requested to allow the present Special Civil Application.

5. Shri Mukesh Rathod, learned advocate appearing on behalf of the respondent has supported the judgment and award passed by the Industrial Tribunal and has submitted that considering the benevolent scheme and to see that the heir of the deceased gets appointment on the death of the bread-winner it is rightly held by the Industrial Tribunal that such application for appointment on compassionate ground should not be rejected on technical ground of delay. It is also further submitted by him that as soon as acquiring the requisite qualification the second application was made and therefore it cannot be said that there was delay. It is also further submitted by him that though the application of the respondent was for appointment as Peon the said application could not have been rejected in 1988 on the ground that she was not having requisite qualification as Peon and that the petitioner could have offered appointment on another post lower than Peon's post and therefore it is requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties. It is not in dispute, that the deceased workman died on 22.8.1986 and the first

application submitted by the respondent came to be rejected on 24.8.1988 on the ground that she was not having requisite qualification for getting appointment as Peon for which the application was submitted. The second application came to be submitted by the respondent-widow on 11.8.1989 after a period of 3 years and 3 months from the date of death of the deceased workman. It is the case on behalf of petitioner Corporation that as per the settlement under which appointment on compassionate ground is to be given the applicant was required to submit an application within 2 years, however, in absence of any settlement on record, the Industrial Tribunal has not accepted the said contention and submission. Even assuming that such time-limit is not mentioned and/or not coming forth on record, still the fact remains that the second application came to be submitted by the respondent after 3 years and 3 months and at the time when the first application was made she was not having requisite qualification. The Industrial Tribunal held that considering the benevolent scheme and the object for which appointment on compassionate ground is to be given to heir of deceased workman such an application should not be rejected on technical ground of delay. Such a finding and the observation of the Industrial Tribunal is contrary to the main object of providing appointment on compassionate grounds. As held by the Hon'ble Supreme Court in the aforesaid decisions,

“the purpose of providing compassionate appointment is to mitigate hardship caused due to sudden death of the bread-winner in the family and it is to alleviate the distress of the family that such appointments are made but these considerations cannot operate when the application is made after a long delay. This is not a reservation.” As held by the Hon'ble Supreme Court in the case of *Haryana State Electricity Board And Another (supra)*, “The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sold breadwinner and that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.” It is also held by the Hon'ble Supreme Court in the aforesaid decision that the appointments on compassionate grounds are to be made as per the scheme and on fulfilling requisite qualification. In the present case, when the petitioner applied at the first instance as a Peon she was not having requisite

qualification of passing Standard 7 examination and due to which when her application was rejected it was not challenged by the respondent. When the second application was made after passing 7th Standard there was already a delay of 3 years and 3 months and therefore it was rightly rejected by the petitioner Corporation as the same being contrary to the settlement and the object and purpose for which compassionate appointments are given. In the facts and circumstances, therefore, the judgment and award passed by the Industrial Tribunal cannot be sustained and the same is required to be quashed and set aside.

7. For the reasons stated above, the petition succeeds. The judgment and award passed by the Industrial Tribunal, Vadodara in Reference (IT) No. 48 of 2002 dated 2.8.2004 is hereby quashed and set aside. Rule is made absolute. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.